



May 9, 1997

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William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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MAY 9 1997

Federal Communications Commission  
Office of Secretary

Dear Mr. Caton:

Re: CPNI, CC Docket No. 96-115; Non-Accounting Safeguards, CC Docket No. 96-149; CMRS Non-Structural Safeguards, WT Docket No. 96-149

Yesterday, Merrienne Hoffman, Regulatory Manager, Pacific Bell, Kathryn Krause, Senior Attorney, US West, Elridge Stafford, Executive Director, Federal Regulatory, US West, Michael Pabian, Senior Attorney, Ameritech, Celia Nogales, Director, Federal Regulatory, Ameritech, Robert Gryzmala, Attorney, SBC Communications, Kirven Gilbert, General Attorney, BellSouth Corporation, and I met with Dorothy Atwood, Jeannie Su, and Raelynn Tibayan, of the Policy and Program Planning Division, Common Carrier Bureau to discuss the issues summarized in the attachment.

We are submitting two copies of this notice in accordance with Section 1.206(a)(1) of the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

Gina Harrison  
Director  
Federal Regulatory Relations  
Pacific Telesis Group  
(A Subsidiary of SBC Communications, Inc.)

cc: D. Atwood  
J. Su  
R. Tibayan

Attachment

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**The Necessary Elements of a CPNI Regime  
Designed to Satisfy Congressional Intent and  
Serve the Public Interest:  
A Coalition Position**

**FCC Dockets 96-115, 96-149, 96-162  
May 8, 1997**

**Ameritech  
BellSouth  
SBC**

**Bell Atlantic  
NYNEX  
U S WEST**

# Discussion

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- CPNI Rules Must Accommodate Customers' Reasonable Expectations of Privacy
- The Public Interest Demands Even-Handed Application of Section 222 to All Telecommunications Carriers
- CPNI is Central to Joint Marketing
- A Notification and Opt-Out Process to Establish Customer Approval for CPNI Use is Not a "Service" Provided to an Affiliate
- Legitimate Forms of Customer Approval for CPNI Use Depend on the Nature of the Relationship
- Disclosure of CPNI to Any Party Outside of the Carrier's Corporate Family Requires Specific Customer Authorization
- The FCC's Approach to Interpreting "Telecommunications Service" Should Reflect Industry Convergence and Market Reality
- CPNI Rules of Computer III Should be Eliminated

## **CPNI Rules Must Accommodate Customers' Reasonable Expectations of Privacy**

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- Section 222 is intended to preserve, not sacrifice, customer privacy expectations. It:
  - ensures customers that information held by their current carrier is properly protected;
  - ensures carrier use of CPNI consistent with Section 222(c)(1)(A)& (B);
  - affords customer choice and control over other uses of CPNI consistent with reasonable commercial practices and customer privacy expectations;
  - allows customers to control which competitors or third parties may obtain the CPNI from the customers' current carrier.
- A significant majority of customers trust their current local exchange carrier to use and protect their record information.

## **CPNI Rules Must Accommodate Customers' Reasonable Expectations of Privacy (Cont'd.)**

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- Customers expect businesses with whom they have relationships to utilize relevant data to communicate with them about existing product and service offerings.
- Customers expect their current carrier and affiliated companies to use their CPNI to market, provision, and provide customer care across a range of products and services - a/k/a "one-stop shopping."
  - Information sharing among affiliates is not uncommon in other industries (e.g., health care, financial services).
  - The recent Fair Credit Reporting Act (FCRA) Reform Amendment allows sharing of experience information in a credit environment across affiliated companies (Consumer Credit Reporting Reform Act, Sections 2402(e) and 2419(2)).
  - The FCC has recognized that customers in existing business relationships have little or no privacy concern within those relationships (TCPA Proceeding, Docket 92-90, 10/16/92, para. 34.).

## **CPNI Rules Must Accommodate Customers' Reasonable Expectations of Privacy (Cont'd.)**

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- Customer privacy expectations would be seriously compromised by the disclosure/release of CPNI to unaffiliated third parties in the absence of affirmative customer authorization.
- The Commission has observed that "one-stop shopping" and packaging of integrated telecommunications service offerings are efficient and in the public interest.
  - Restricting a carrier's access to its CPNI would vitiate its ability to achieve such efficiencies.
  - Customers are frustrated and annoyed when the carrier's representative does not have access to or knowledge of information associated with the existing business relationship.
  - CPNI is central to identifying customers who may need or find useful existing products and services available to them.
  - CPNI is central to innovative product development and design, activities which have the potential to materially enrich the marketplace with new communication, information, and entertainment services.

## **The Public Interest Demands Even-Handed Application of Section 222 to All Telecommunications Carriers**

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- Section 222 of the statute applies by its terms to all telecommunications carriers that receive or obtain CPNI.
  - Where the Telecommunications Act, including Section 222, was intended to apply to the LECs only, such intentions were expressly stated.
  - There are no BOC-only provisions in Section 222.
  - The legislative history associated with Section 222 demonstrates Congress' deliberate shift from BOC-only provisions to all-carrier provisions.
- Congress sought to address, in a comprehensive way, both the privacy and competitive concerns associated with CPNI by enacting Section 222 (NPRM Docket No. 96-115, para. 15).
  - There is no evidence that Congress meant to compromise the CPNI provisions of Section 222 when it enacted Section 272.
- A customer approval process for CPNI should be governed by Section 222, not Section 272.

## **The Public Interest Demands Even-Handed Application of Section 222 to All Telecommunications Carriers (Cont'd.)**

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- The public interest demands even-handed application of industry-wide CPNI safeguards.
  - Even-handed CPNI safeguards will honor customer privacy expectations regarding the information their current carrier holds about them.
  - Customers privacy expectations do not vary by carrier.
  - Customers benefit from the efficiencies of integrated offerings.
  - Customers would be confused by having different rules apply to different carriers.
- Regulations that complicate the relationship between customers and their current carrier add unwarranted inefficiencies to the introduction and delivery of services.
- Uneven application of Section 222 will burden individual carriers and act to the detriment of advancing competition.



## CPNI is Central to Joint Marketing

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- CPNI is critical to those activities the FCC recently identified, in CC Docket No. 96-149, as basic to any joint marketing activity:
  - responding to customer inquiries;
  - performing sales functions;
  - processing orders for services requested;
  - other activities on a case by case basis.
- A less task oriented and more customer focused approach is found in prior Commission joint marketing orders:
  - identifying potential customers and formulating proposals to those customers - Phase II Supplemental NPRM, CC Docket No. 85-229, FCC 86-253, released 6/16/89, at para. 55.
  - identifying "certain customers whose telecommunications needs are not being met effectively and to market an appropriate package of enhanced and basic services to such customers" - Phase II Reconsideration. Order, 3 FCC Rcd. 1150 (1988), para. 97.

## **CPNI is Central to Joint Marketing (Cont'd.)**

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- CPNI is also, however, critical to product design and development, integral aspects of any commercially reasonable notion of joint marketing.
- Thus, a BOC's use of CPNI to support joint marketing and sales, or its providing CPNI to an affiliate for such purpose, are activities permitted to be done within Section 272(g)(3) on an exclusive basis.

## CPNI is Central to Joint Marketing (Cont'd.)

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- When the BOC meets the checklist and the BOC and its 272 affiliate are able to actively sell local and interexchange services, the BOC and its affiliate should be able to compete on equal footing with other competitors.
  - "After a BOC receives authorization under section 271, the restriction in section 272(g)(2) is no longer applicable, and the BOC will be permitted to engage in the same type of marketing activities as other service providers." (96-149, para. 291, First Report and Order).
  - No additional regulatory barriers to CPNI access and use need be imposed.

## **A Notification and Opt-Out Process to Establish Customer Approval for CPNI Use is Not a "Service" Provided to an Affiliate**

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- A carrier's notification and opt-out process is speech between the carrier and its customers.
- The notification and opt-out process communicates the carrier's intended use/disclosure of the CPNI and the customers rights regarding such use/disclosure.
- This communication is not a "service" provided to an affiliate.

## **Legitimate Forms of Customer Approval for CPNI Use Depend on the Nature of the Relationship**

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- The record in Docket No. 96-115 identifies extensive research and existing industry standards regarding methods of obtaining approval.
- Customer approval may be found in the existing business relationship or through a variety of other means, such as, but not limited to, orally or through a notice and opt out process.
- This approval process may encompass sharing of the information with affiliates.
- Third parties' use of notice and opt-out for obtaining another carrier's CPNI is not a legitimate method to obtain that CPNI.
  - There is no pre-existing customer-carrier relationship.
  - Notice and opt-out by third parties is contrary to the status quo and customer expectations.

## **Disclosure of CPNI to Any Party Outside of the Carrier's Corporate Family Requires Specific Customer Authorization**

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- Carriers have a general duty to protect proprietary information of and relating to their customers.
- The Act is clear that if the customer requests in writing that their carrier disclose CPNI to any party, a carrier must do so.
- Other Commission-sanctioned third party authorization methods must provide sufficient assurance that the customer has authorized the disclosure of CPNI.
  - The disclosing carrier must be held harmless from liability for disclosure of the CPNI to third parties who profess to have customer authorization.

# **The FCC's Approach to Interpreting "Telecommunications Service" Should Reflect Industry Convergence and Market Reality**

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- Misguided suggestions to narrow the definition of "telecommunications service" would serve no purpose in protecting consumer privacy or promoting competition.
- The FCC's original, tentative interpretation of "telecommunications service" is already out of date.
  - Services currently available to customers cannot easily be placed into one of three buckets, e.g., wireless/wireline.
  - The proposed buckets make no sense in the wireless context.
- Statutory language can be fairly construed to support a "single bucket" interpretation, encompassing all telecommunications service offerings made to a customer.
- In addition to "the publishing of directories," Section 222(c)(1)(B) allows CPNI use for "services necessary to or used in the provision of" a telecommunications service.
  - CPE and enhanced services (e.g., voice mail) are examples of such services.

## CPNI Rules of Computer III Should be Eliminated

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- The Commission's Computer III CPNI objectives are met via the provisions of the 1996 Act.
- There is no need for multiple sets of CPNI rules.
- The Commission should implement one set of CPNI rules in accordance with the Act's clear mandate that all carriers and their customers be treated equally.